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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/654,118	09/03/2003	Tim A. Fischell	CRD-5047	4013

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EXAMINER
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AUGHENBAUGH, WALTER

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 05/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/654,118

**Applicant(s)**

FISCHELL ET AL.

**Examiner**

Walter B. Aughenbaugh

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Acknowledgement of Applicant's Amendments***

1. The amendments made in claims 1, 4 and 10 in the Amendment filed February 21, 2006 (Amdt. A) have been received and considered by Examiner.
2. The amendments made in the abstract in Amdt. A have been received and considered by Examiner.

### ***WITHDRAWN OBJECTIONS***

3. The objection to the abstract made of record in paragraph 3 of the previous Office Action mailed October 7, 2005 has been withdrawn due to Applicant's amendments in the abstract in Amdt. A.
4. The objection to claim 1 made of record in paragraph 4 of the previous Office Action mailed October 7, 2005 has been withdrawn due to Applicant's amendment in claim 1 in Amdt. A.

### ***REPEATED REJECTIONS***

#### ***Claim Rejections - 35 USC § 102***

5. The 35 U.S.C. 102 rejection of claims 1-8 made of record in paragraph 6 of the previous Office Action mailed October 7, 2005 has been repeated for the reasons previously made of record and for the following reasons that address the amendments made in claims 1 and 4 in Amdt. A: in regard to claim 1, Vrba teaches that each spoke (where item 12 of Fig. 1 consists of spokes, or where the five connecting elements between item 12 and item 14 as shown in Fig. 1 correspond to spokes) is connected to the proximal-most circumferential set of strut members at the distal end of the stent (Fig. 1). Each of the spokes have a closed perimeter because cross-

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sections of the spokes, taken as a longitudinal cut of the spokes, have a circular (therefore, closed) perimeter (Fig.1). Each of the spokes of Vrba contain struts because item 12 are connected to the five connecting elements between item 12 and item 14, so in the condition where item 12 consists of spokes, the five connecting elements between item 12 and item 14 correspond to the struts as claimed, and in the condition where the five connecting elements between item 12 and item 14 correspond to the spokes as claimed, item 12 (or a portion of item 12 such as the vertically oriented portions on the right-hand side of item 12) correspond to the struts as claimed (Fig.1). There is an opening between each of the spokes in either condition identified above (Fig.1).

In regard to claim 4, Vrba teaches that each spoke is only attached to the proximal-most circumferential set of strut members of the distal section of the stent, as opposed to the spokes being attached to any of the circumferential set of strut members other than the proximal-most circumferential set of strut members of the distal section of the stent (Fig. 1).

6. The 35 U.S.C. 102 rejection of claims 10-13 and 15 made of record in paragraph 7 of the previous Office Action mailed October 7, 2005 has been repeated for the reasons previously made of record and for the following reasons that address the amendment made in claim 10 in Amdt. A: Lam teaches that the split proximal section (flaring portion, item 25, Fig. 2 and 3) contains a series of a series of spokes (each pedal 27 is a spoke, a series of pairs of pedals 27, for instance, is a series of a series of pedals) (col. 6, lines 16-28 and Fig. 2). Each of the pedals 27 of Lam has a closed perimeter (where the perimeter of each of the pedals 27 has the shape of a D where the D is stretched laterally, see Fig. 2). Each of the pedals 27 contains a strut (radiopaque

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markers 35, Fig. 2 and col. 6, lines 16-28). Each pair of neighboring pedals 27 have an opening between (Fig. 2).

***Claim Rejections - 35 USC § 103***

7. The 35 U.S.C. 103 rejection of claims 16 and 17 made of record in paragraph 9 of the previous Office Action mailed October 7, 2005 has been repeated for the reasons previously made of record and for the reasons provided above that address the amendment made in claim 10 in Amdt. A.

8. The 35 U.S.C. 103 rejection of claim 9 made of record in paragraph 10 of the previous Office Action mailed October 7, 2005 has been repeated for the reasons previously made of record and for the reasons provided above that address the amendments made in claim 1 in Amdt. A.

9. The 35 U.S.C. 103 rejection of claim 14 made of record in paragraph 11 of the previous Office Action mailed October 7, 2005 has been repeated for the reasons previously made of record and for the reasons provided above that address the amendment made in claim 10 in Amdt. A.

***NEW OBJECTIONS***

***Specification***

10. The amendment filed February 21, 2006 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the recitation "each of the spokes having a closed perimeter containing struts with an opening therebetween" added to claim 1 is not

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supported in the specification as originally filed. Applicant's use of the word "struts" as opposed to "strut members" indicates that Applicant intends the "struts" to be a component of the stent that is different from the "strut members"; however, there is no support in the specification as originally filed for a component of the spokes, where the component is the "struts" as claimed.

Applicant is required to cancel the new matter in the reply to this Office Action.

### ***NEW REJECTIONS***

#### ***Claim Rejections - 35 USC § 112***

11. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

12. Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The recitation "each of the spokes having a closed perimeter containing struts with an opening therebetween" is not supported in the specification as originally filed. Applicant's use of the word "struts" as opposed to "strut members" indicates that Applicant intends the "struts" to be a component of the stent that is different from the "strut members"; however, there is no support in the specification as originally filed for a component of the spokes, where the component is the "struts" as claimed.

13. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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14. Claims 1 and 4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: the relationship between the spokes, the closed perimeter, the struts and the opening. It is unclear how a perimeter of a spoke would “contain” struts. The opening is between which of components: between two spokes? Between a spoke and a strut? Between two struts? In further regard to claim 1, the proximal-most circumferential set of strut members cannot be “at the distal end of the stent” since the distal-most circumferential set of strut members is at the distal end of the stent.

In further regard to claim 4, the proximal-most circumferential set of strut members cannot be “of the distal end of the stent” since the distal-most circumferential set of strut members is of the distal end of the stent.

#### ***Response to Arguments***

15. Applicant’s arguments presented on page 7 of Amdt. A regarding the 35 U.S.C. 102 rejections of claims 1 and 10 have been fully considered but are not persuasive. The recitations added to claims 1 and 10 in Amdt. have been addressed in the updated 35 U.S.C. 102 rejections of claims 1 and 10 made of record above in this Office Action. The art of record teaches those limitations for the reasons provided above.

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16. Applicant's arguments presented on pages 7-8 of Amdt. A regarding the 35 U.S.C. 103 rejections of claims 9, 14, 16 and 17 have been fully considered but are not persuasive.

Applicant's arguments depend entirely upon Applicant's arguments regarding the 35 U.S.C. 102 rejections of claims 1 and 10 which have been addressed above.

***Conclusion***

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is 571-272-1488. While the examiner sets his work schedule under the Increased Flexitime Policy, he can normally be reached on Monday-Friday from 8:45am to 5:15pm.



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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is to 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Walter B. Aughenbaugh

05/05/06

WBA

  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
1772

5/8/08